IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 215 of 2000

with

CRIMINAL MISC.APPLICATION No 2696 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAVJIBHAI KARSANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 215 of 2000
   MR PJ KANABAR for Petitioner No. 1-2
   MR BD DESAI, APP, for Respondent No. 1
   MR BK DAVE for Respondent No. 1
2. Criminal Misc.Application No. 2696 of 2000
   MR EE SAIYED for Petitioner No. 1
   MR BD DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/10/2002

ORAL JUDGEMENT

1. This Criminal Revision Application is preferred by accused facing criminal trial before the learned Additional City Sessions Judge, Court No.10, Ahmedabad, in Sessions Case No.162 of 1997. The petitioners in Misc. Criminal Revision Application No.2696 of 2000 are co-accused to the present revisioners. The revisioners are aggrieved by an order passed by learned Additional City Sessions judge, Court No.10, on the 18th May, 2000, allowing application Ex.13 before him in the said Sessions Case, praying for a direction for further investigation under Section 173(8) of the Code of Criminal Procedure on the investigating agency. The said application, Ex.13, was tendered by learned Additional Public Prosecutor, stating that deceased-Riddhiben Nareshbhai Patel was taken to Civil Hospital by Bharatbhai Karsanbhai Patel, where history was given that her mother sustained electric current while heating water with electric heater for bathing. However, the Panchnama of the place of incident is indicative of the fact that the deceased died of kerosene burns and not electric current. It is not the case that the fire started because of short circuit in the current and, therefore, further investigation was prayed for. The learned Additional City Sessions Judge, after considering the various aspects, allowed the application and directed the Investigation Officer to make further investigation under Section 173(8) of the Code of Criminal Procedure. Two of the accused persons, on being aggrieved, have preferred this revision application to challenge the said order.

1.1 Misc. Criminal Application No.2696 of 2000 is prefrred by accused-Nareshkumar Mavjibhai Devani challenging the said order, not by way of revision, but by way of a petition for quashment of the said order.

2. The revisioners are represented by learned Advocate, Mr. Kanabar. Learned Advocate, Mr. Kanabar, submitted that the revisioners assail the impugned order on the ground that the Sessions Court could not have ordered further investigation under Section 173(8) of the Code of Criminal Procedure after cognizance. It was also submitted that the power was exercised by the Sessions Court at the behest of the complainant, which is also not permitted. Mr. Kanabar submitted that this application is given only with a view causing harassment to the accused persons. The incident is of 2nd March, 1997 and,

after such a long time, this application was moved. He submitted, therefore, that this revision may be allowed and the order in question may be set aside.

2.1 Mr. Kanabar placed reliance on the following decisions :-

(1) Randhir Singh Rana v. The State (Delhi Administration), AIR 1997 SC 639.

(2) Shantilal Jethalal Shah v. State of Gujarat, 1997(2) GCR 33 (Guj) (UJ).

(3) Rikhab Das v. Manak Chand & Another, 1998 Cri. L.J. 3075.

3. State of Gujarat is represented by learned Additional Public Prosecutor, Mr. Desai. He submitted that, as per the law settled by this Court in Sarlaben Virsing Bamaniya & Another v. State of Gujarat & Another, 1989(1) GLH, 148 and Surendrabhai Babubhai Patel v. State of Gujarat, 1985 GLH 299, investigation can be ordered under Section 173(8) even after taking cognizance.

3.1 It was contended by learned Additional Public Prosecutor, Mr. Desai, that the decisions relied upon by learned Advocate, Mr. Kanabar, do not lay down the proposition as contended by the revisioners. He submitted that the decision in Shantilal Jethalal Shah v. State of Gujarat (supra) was in facts of that case and the Apex Court, in Randhir Singh Rana's case, has not laid down any proposition that further investigation cannot be ordered after taking cognizance. He, therefore, submitted that both the matters may be dismissed.

4. Having regard to rival side contentions, there is no dispute on the fact that the application for further investigation was given and further investigation was ordered by the learned Additional City Sessions Judge, after framing of charge and, therefore, factually, it cannot be said that the said order was passed after taking cognizance. The question, therefore, requires to be addressed by this Court is whether the Sessions Court could have ordered further investigation under Section 173(8) of the Code of Criminal Procedure, after taking cognizance.

5. Learned Advocate, Mr. Kanabar, has relied on the decision in the case between Randhir Singh Rana v. The

State (Delhi Administration), AIR 1997 SC 639. In that case, the Apex Court considered the case of Tula Ram v. Kishore Singh, AIR 1977 SC 2401 and referred to paragraph 14 thereof. In paragraph 14 of the said case, the Apex Court culled out the following legal prosition:-

"1. That a Magistrate can order investigation under Section 156(3) only at pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order an investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to

the complaint filed before him and take action under Section 190 as described above."

The Apex Court, thereaafter, observed in Randhir Singh Rana's case that the aforesaid points do show that after cognizance has been taken and the accused has made appearance pursuant to the process issued against him, the Magistrate was not conceded the power to order investigation. The Court, however, added that the point under consideration had no come up for direct examination in Tula Ram's case. In Randhir Singh Rana's case, the Apex Court, thereafter, considered various judgments and, ultimately, in paragraph 11, the Court observed that the Magistrate 'of his own' cannot order for further investigation after taking cognizance and then went on to set aside the order of the Magistrate as that was done by the Magistrate 'of his own'. The proposition, thus, laid down by the Apex Court in Randhir Singh Rana's case is that, after taking cognizance, the Magistrate cannot, of his own, order further investigation in the case. Differently put, there cannot be any bar to the Court directing further investigation, if indulgence is sought by giving an application. The said judgment does not impose any such bar. It is not possible to accept the interpretation made and point canvassed by learned Advocate, Mr. Kanabar, for the revisioners that Magistrate Court cannot order further investigation after taking cognizance. The words 'of his own' used in the judgment cannot be ignored.

5.1 It was urged that, at the behest of the complainant, the investigation could not have been directed and in support thereof, decision in the case of Rikhab Das v. Manak Chand (1998 Cri. L.J. 3075) was referred to by learned Advocate, Mr. Kanabar. In that decision, a view is taken by the Rajasthan High Court that, directing investigation in view of the application of complainant was without jurisdiction and invalid. However, in light of the view taken by the Apex Court in Randhir Singh Rana's case, this proposition cannot be accepted because the Apex Court has said that, after taking cognizance, the Court may, by itself, not direct further investigation. Therefore, there has to be some initiation by somebody and there is no reason why complainant's application may vitiate such direction. It is, in fact, the complainant who would be affected by improper or non-investigation. It is, therefore, not possible to accept this contention of the revisioners.

6. In case of Shantilal Jethalal Shah, a

learned Single Judge of this Court made following observations :-

> "In my view, there is no substance in the contention raised by the learned counsel for the respondent No.2. A bare reading of impugned order says that the direction for further investigation has been given after taking cognizance. The Supreme Court case cited by learned counsel is not attracted in the facts of the present case as the revisioner has challenged the order with respect to further investigation after cognizance is taken. The contention raised by the petitioner is squarely covered by the decision of the Apex Court in Randhir Singh Rana's case."

It is, therefore, clear that the observation was made in facts of the case and, as discussed above, Randhir Singh Rana's case lays down a proposition that, after taking cognizance, the Magistrate 'of his own' cannot direct further investigation under Section 173(8). Therefore, the said observation in the said decision, having been made in the facts of that case, cannot be made applicable to the present case and cannot help the revisioners.

7. Against this, the decision of this Court in the case of Surendrabhai Babubhai Patel v. State of Gujarat, 1985 GLH 299, if considered, has taken a clear view that further investigation under Section 173(8) can be ordered also after filing of charge sheet. The Court considered Tula Ram's case and observed that the contention of the learned Advocate that in the said case, the Apex Court has laid down that once the Magistrate has taken cognizance of the offence, he has no jurisdiction to direct the Investigating Officer to make further investigation is misconceived because in the said case, the Supreme Court has not considered the ambit and scope of Section 173(8) of the Code of Criminal Procedure (incidentally, this was also observed by the Apex Court in Randhir Singh Rana's case). It was observed that the decision nowhere lays down that under Section 173(8), the Court has no jurisdiction to direct further investigation, if necessary, once cognizance of the case is taken. In Sarlaben Virsing Bamaniya and Another v. State of Gujarat & Another, 1989(1) GLH 148, a learned Single Judge of this Court considered the question whether the Sessions Court is empowered to order further investigation under Section 173(8) and it was observed that, if an application further further investigation is given before the Sessions Court, it shall be decided by

the Sessions Court on merits. The Court observed that to propound a proposition that the Sessions Judge has no powers to order further investigation and only the Magistrate would have powers under Section 173(8) would sound illogical.

8. What necessarily follows is that, there is no prohibition on ordering further investigation under Section 173(8) of the Code of Criminal Procedure after taking cognizance, upon an application from the complainant, as is the case here.

9. Now, coming to the merits, it is contended that it is harassment to the revisioners, as the incident is very old. However, considering the contents of application Ex.13 before the Trial Court, prima facie, it appears that this is a case where some further investigation is called for as to what was the cause of fire. Whether it was short circuit or whether it was a fire by kerosene are two aspects that need to be probed into. It may help the complainant's case or may help the accused as well and, therefore, even at the cause of some delay, further investigation has to be permitted. The investigation will go to the root of the matter and may have a direct bearing on the texture of the prosecution case.

10. For the foregoing reasons, there appears no reason to interfere with the order impugned in these petitions. The revision application and the Misc. Criminal Application must, therefore, fail. Hence, they are dismissed. Rule is discharged in both the matters. Interim relief in both the matters is vacated.

[A.L. DAVE, J.]
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